IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1329 OF 2000

Shri Yogiraj Dashrath Nagpure
Age 39 years, Occ. Retired
Residing at 286, Kasba Peth,
Pune - 411 011 ...Petitioner.

V/s

1. State of Maharashtra,
represented by:
The Secretary
Department of Animal
Husbandry, Mantralaya
Mumbai- 400 032.

2. The Commissioner
Animal Husbandry (Maharashtra
State), Central Building
Pune - 411 001. ...Respondents.

Mr. Sanjeev J. Rairkar for the petitioner.

Mr. S.r. Nargolkar AGP for the respondents 1 and 2.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE: 19th July, 2004

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Petitioner is seeking writ of certiorari or any other appropriate writ for quashing and setting aside the Order dated 21/07/1997 passed by respondent No.2 and the Order dated 22/01/1998 issued by respondent No.1 and the Order dated 9/7/1999 passed by the Maharashtra Administrative Tribunal in Original Application No.294 of 1998. He is also seeking a

declaration that he was entitled to time bound promotion to the post of Senior Assistant with effect from 22/11/1994. Petitioner is further seeking direction that he be considered for time bound promotion to the post of Senior Assistant by ignoring uncommunicated alleged adverse Confidential Reports and to promote him to the aforesaid post from 22/11/1994 and for all consequential benefits including arrears of salary till his superannuation on 30/09/1997.

2. Petitioner was appointed on 14/1/1959 to the post of Junior Clerk. Thereafter, he was promoted to the post of Senior Clerk on 22/11/1982. Respondent No.1 - State of Maharashtra issued a Resolution dated 08/06/1995 which provided for time bound promotion of the employees who have completed 12 years of service in the post of Senior Clerk to the next higher post of Senior Assistant. In 1996, petitioner made a representation seeking grant of time scale as he had become eligible to the promotion of Senior Assistant from 01/11/1994. Thereafter, another representation was addressed to respondent No.2 dated 07/06/1997. On 21/07/1997, the respondent No.2 gave reply to the representation of the petitioner informing him that his request for time bound promotion was considered by the Promotion Committee. However, he was not found

fit on account of his adverse Confidential Reports. Thereafter, the petitioner preferred another representation against the said order.

3. On 22/01/1998, respondent No.1, according to the petitioner, for the first time, informed his Confidential Reports for the years 1989-90 to 1993-1994 and, thereafter, he made another representation on 14/2/1998. However, no reply was given to the said representation. He, therefore, made an application before the Maharasthra Administrative Tribunal (For short "MAT"). Respondents filed their reply in which, inter alia, it was contended that the petitioner's Confidential Reports for the period from 1989-1990 to 1992-93 were not satisfactory and, therefore, petitioner was not found fit for time bound promotion. The MAT dismissed the application of the petitioner. Petitioner has challenged both the orders in this Writ Petition.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that the respondents could not rely upon any adverse entry in the Annual Confidential Reports which were not communicated to him. He, therefore, submitted that the reliance placed by the respondents for the adverse entries was

erroneous and illegal. It is submitted that the only adverse Confidential Report for the year 1992-93 was communicated after a lapse of three years in February, 1996. It is, therefore, submitted that the petitioner was eligible to get the benefit of time bound promotion of Senior Assistant in terms of Government Resolution dated 08/06/1995. In support of the said submissions, the learned Counsel appearing on behalf of the petitioner has relied upon the judgment of the Apex Court in the case of **Gurdial Singh Fijji Vs. State of Punjab and others** reported in **AIR 1979 SC 1622** wherein the Apex Court held that the adverse entry in the Confidential Reports cannot be acted upon to deny the promotional opportunities unless it is communicated to the person concerned. He further relied upon the Division Bench Judgment of this Court in the case of **A.P. Angadi vs. Maharashtra State Electricity Board, Bombay** reported in **2003(3) Mh.L.J. 715** wherein the Division Bench observed that the petitioner was entitled to get the benefits of higher pay-scale since he was holding the necessary qualification for promotion to the said post and neither any disciplinary proceedings were pending against him nor any adverse remarks were communicated to him.

5. The learned Counsel appearing on behalf of the respondents vehemently opposed the said submissions. He submitted that the MAT had considered the submissions of the petitioner and had given the cogent reasons for rejecting his application. He submitted that, therefore, there was no occasion for this Court exercising its jurisdiction under Article 226 and 227 of the Constitution of India.

6. It is an admitted position that the petitioner has reached the age of superannuation on 30/9/1997. Reply filed by the Assistant Director of Animal Husbandry before the MAT reveals that the adverse remarks for the years 1992-93 were communicated to the petitioner. Further, it reveals that the Confidential Reports for the year 1992-93 & 1993-94 indicate that the petitioner was kept informed about his lapses in the work from time to time. The Confidential Reports of the petitioner were perused by the MAT on the same being made available by the Presenting Officer. The memo was also served on him on 1/3/1994 for excess deduction of income tax from the pay bill of February 1994 of Gazetted Officers. Other memos were also issued to the petitioner on the basis of office inspection which was held between 10/05/1993 to 12/05/1993.

7. In our view, the MAT has taken into consideration the Confidential Reports of the petitioner and has given a finding that the memos were served on him from time to time. We do not see any reason to interfere with the said finding. There is no reason to interfere with the order passed by the MAT. Writ Petition is accordingly dismissed.

V.G.PALSHIKAR,J.

V.M. KANADE, J.